

EXHIBIT 12

to

**PAUL D. BRACHMAN DECLARATION
IN SUPPORT OF INTUITIVE'S MOTION FOR
LIMITED SUPPLEMENTAL DISCOVERY**

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18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**
20 **SAN FRANCISCO DIVISION**

21 SURGICAL INSTRUMENT SERVICE
22 COMPANY, INC.,
Plaintiff,
23 v.
24 INTUITIVE SURGICAL, INC.,
Defendant.

Case No. 3:21-cv-03496-AMO

25 **STIPULATION OF FACTS**

26 The Honorable Araceli Martínez-Olguín
27
28

1 Plaintiff Surgical Instrument Service Company, Inc., and Defendant Intuitive Surgical,
2 Inc. stipulate to the following facts as true since November 10, 2022:

3 1. SIS is aware, and has been aware since at least April of 2023, of Intuitive's
4 statement that it will not void its service contract with, cease doing business with, or consider it a
5 breach of contract by a customer in the United States who chooses to purchase remanufactured
6 instruments that have been remanufactured by a third party pursuant to and in compliance with a
7 510(k) clearance or equivalent granted by the FDA.

8 2. SIS has not sought or received FDA clearance for any service relating to
9 EndoWrists.

10 3. SIS is not aware of any other third-party, except Iconocare, that has sought or
11 received FDA clearance for any service relating to EndoWrists.

12 4. SIS is not aware of the FDA having granted clearance to any third-party to
13 remanufacture any instruments for use with 4th generation da Vinci technology, including the da
14 Vinci X, Xi and SP systems.

15 5. SIS has not developed the technical ability to reset the use counter on X/Xi
16 EndoWrists.

17 6. SIS is not aware of any other third-party that has developed the technical ability to
18 reset the use counter on X/Xi EndoWrists.

19 7. SIS has not sold or offered to sell its own or any other third-party's EndoWrist
20 repair or remanufacturing service to any customer.

21 8. SIS has not entered into any partnership or other venture with Restore, Iconocare,
22 or any other third-party to sell any FDA-cleared EndoWrist products or services to any customer.

23 9. SIS has continued to offer its EndoWrist "recovery" service to customers.

24 10. SIS is not aware of Intuitive Surgical having done anything to interfere with SIS's
25 ability to offer its EndoWrist "recovery" service to customers.

26 11. SIS continues to provide instrument repair services to hospitals and its business
27 has been profitable in each year between 2022 and now.
28

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: July **X**, 2024

By: **DRAFT**

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E-Filing Attestation

I, _____, am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that each of the signatories identified above have concurred in this filing.

DRAFT _____